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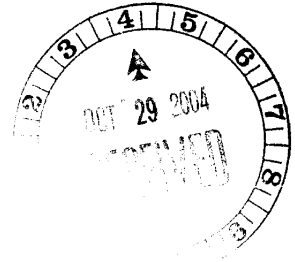
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October 29, 2004

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OCT 29 2004

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Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

RE: Finance Docket No. 34495, *Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Motion to Strike and in the alternative Response of Buckingham Branch Railroad Company and CSX Transportation, Inc. and three computer diskettes in containing the Response.

Please time and date stamp the additional copy of this letter and the Response and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours

Louis E. Gitomer
Attorney for: CSX Transportation, Inc.

Enclosures

ORIGINAL

BBRR-11/CSXT-11

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD COMPANY—LEASE—
CSX TRANSPORTATION, INC.



MOTION TO STRIKE OR IN THE ALTERNATIVE RESPONSE OF
BUCKINGHAM BRANCH RAILROAD COMPANY AND
CSX TRANSPORTATION, INC. TO PLEADING OF
BROTHERHOOD OF RAILROAD SIGNALMEN

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Counsel for Buckingham Branch Railroad
Company

Dated: October 29, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD COMPANY—LEASE—
CSX TRANSPORTATION, INC.

MOTION TO STRIKE OR IN THE ALTERNATIVE RESPONSE OF
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CSX TRANSPORTATION, INC. TO PLEADING OF
BROTHERHOOD OF RAILROAD SIGNALMEN



Buckingham Branch Railroad, Inc. (“BB”) and CSX Transportation, Inc. (“CSXT”), jointly referred to as “Applicants,” move to strike the Pleading filed by the Brotherhood of Railroad Signalmen (“BRS”) on October 22, 2004. In the alternative, Applicants request leave to submit a brief response. Applicants only became aware of the Pleading through a review of the web site of the Surface Transportation Board (the “Board”).

On May 26, 2004, Applicants filed an Application with the Board pursuant to 49 C.F.R. Part 1180, seeking approval of the lease transaction under 49 U.S.C. § 11324(d), and the Board accepted the Application, and established a procedural schedule.¹ Under the procedural schedule, comments on the Application were required to be filed by August 24, 2004, and responses and rebuttal on September 23, 2004. The Board held oral argument in this proceeding on October 13, 2004, and did not call for any post-argument briefs. BRS filed the Pleading on October 22, 2004. The Board established November 5, 2004 as the decision date.

¹ *Buckingham Branch Railroad Company—Lease—CSX Transportation, Inc.*, STB Finance Docket No. 34495 (STB served June 22, 2004) (“*Acceptance Decision*”).

MOTION TO STRIKE

“The Board may reject a document, submitted for filing if the Board finds that the document does not comply with the rules.” 49 C.F.R. § 1104.10(a). Applicants urge the Board to find that BRS’s Pleading does not comply with the rules and reject the Pleading.

The Pleading was not filed in a timely matter as required by the *Acceptance Decision*. Not only was the Pleading filed 59 days after it was required to be filed, it was filed 29 days after responses and rebuttal were due,² and 10 days after oral argument. Not only is the Pleading late, but it is an 11th-hour filing that the Board discourages.³

The Pleading was not served on the parties to this proceeding, as required by the *Acceptance Decision* and 49 C.F.R. § 1104.12(a).

In addition, the Pleading fails to comply with the specific requirements of 49 C.F.R. § 1104.2(a) (not double spaced), 49 C.F.R. § 1104.4 (non-attorney signature not verified), 49 C.F.R. § 1104.6 (not timely), and 49 C.F.R. § 1104.12 (not served).

Applicants respectfully request the Board to reject the Pleading.⁴

RESPONSE

BRS claims that BB will not be able to maintain the signals or grade crossings. BRS is wrong.

In the Application and Lease Agreement it is stated that CSXT will retain responsibility for maintaining the signal system for two years. At the end of two years, BB will assume responsibility for the signal system if the Federal Railroad Administration has not approved

² The Pleading is dated September 30, 2004, which is still more than one month after it was required to be filed and one week after responses and rebuttal were due.

³ See *MVC Transportation, LLC—Acquisition Exemption—P&LE Properties, Inc.*, STB Finance Docket No. 34462 (STB served October 20, 2004), at 4.

abandonment of the signal system. In the Application, BB indicated that it would hire six employees to maintain the signal system.

As part of its maintenance of the Line, BB will maintain all grade crossings. As BB has repeated numerous times in this proceeding, safety is a primary concern. BB was not required to explain its maintenance plans for grade crossings in the Application, and no issue was raised in time for BB to prepare a response on rebuttal. However, as the board can see from the Maintenance Plan submitted by Mr. Bryant with Applicants' rebuttal, BB plans to regularly inspect the Line and repair any defects found. This inspection and repair will include the grade crossings.

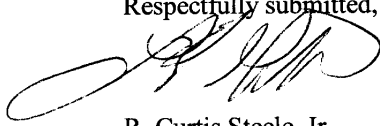
Finally, BRS is concerned about loss of jobs. Any BRS employees adversely affected by the proposed transaction will be protected by *Mendocino Coast Ry., Inc.--Lease and Operate*, 354 I.C.C. 732 (1978), as modified in *Mendocino Coast Ry., Inc.--Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. RLEA v. ICC*, 675 F.2d 1248 (D.C. Cir. 1982), as modified by *Wilmington Term. RR, Inc.—Pur. & Lease-CSX Transp., Inc.*, 6 ICC2d 799, 814-826 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n v. I.C.C.*, 930 F.2d 511 (6th Cir. 1991).

⁴ As an alternative, Applicants request the Board to treat the Pleading as unverified correspondence entitled to little if any weight.

CONCLUSION

Applicants respectfully request the Board to reject the BRS Pleading for failing to comply with the Board's procedures, as detailed above. Applicants also request the Board to accord no weight to BRS's inaccurate claims that BB will be unable to maintain the signal system or the grade crossings on the line.

Respectfully submitted,



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Counsel for CSX Transportation, Inc.

Counsel for Buckingham Branch Railroad
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Dated: October 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon the following parties by first class mail pre-paid.

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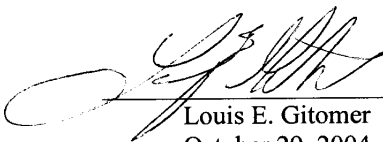
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October 29, 2004